UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/45/670
6 November 1990

ORIGINAL: ENGLISH

Forty-fifth session
Agenda item 34

POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICA

Measures to monitor sanctions against South Africa undertaken by the United Nations system, Governments and non-governmental agencies

Report of the Secretary-General

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I. INTRODUCTION

1. The present report has been prepared in response to General Assembly resolution 44/27 D of 22 November 1989, in which the Assembly requested the Secretary-General to report to it at its forty-fifth session on measures to monitor sanctions against South Africa undertaken by the United Nations system, Governments and non-governmental agencies, taking fully into account reports of existing intergovernmental monitoring mechanisms. 1/ In that resolution the Assembly considered that measures taken by States individually or collectively, while commendable, varied in coverage and degree of enforcement and monitoring and were not always addressed to those areas of the South African economy which were vulnerable to international pressure. The Assembly urged all States that had not yet done so, pending the imposition of comprehensive and mandatory sanctions, to adopt legislative and/or comparable measures to impose effective sanctions against South Africa. It also urged all States to monitor strictly the implementation of such measures and adopt, when necessary, legislation providing for penalties on individuals and enterprises violating those measures.

2. This report examines the status of the monitoring of sanctions against South Africa carried out by the United Nations system, by Governments and by intergovernmental organizations. It also surveys the mechanisms adopted by non-governmental organizations to monitor the implementation of sanctions in their respective countries. Whenever possible, the report is based on information supplied by government sources. 2/ Where no government information on official procedures was forthcoming, various sources were used, including information supplied by non-governmental organizations in the countries concerned. It has not been possible to verify the information supplied by those sources.

II. DEFINITION OF MONITORING

3. The adoption of sanctions aimed at applying pressure on South Africa to eradicate apartheid has involved political debate within the international community as well as within States. Some Governments have regularly expressed reservations about the desirability and/or the efficacy of sanctions, while a majority have been strong advocates of such measures based on the view that the pressure must be maintained until change in South Africa is seen to be irreversible. However, even in such cases, non-governmental organizations often criticize that sanctions programme as not going far enough to place real pressure on Pretoria.

4. Similar controversy finds its way into the issue of monitoring sanctions. The term monitoring normally implies keeping a watch over, or following closely, "keeping tabs on" a particular process on an ongoing basis. Governments, intergovernmental organizations and non-governmental organizations tend to have different views on the requirements and desirability of monitoring.

5. Most Governments consider that once a policy such as sanctions is adopted, the normal procedures of Government, namely policy implementation, administration,

co-ordination and enforcement, necessarily involve the "monitoring" of such policies. In real terms, to enforce a law implies planning its application, indicating departmental jurisdiction and co-ordination, preparing the requisite regulations, making available the necessary financial and personnel resources, devising procedures to gather the intelligence concerning possible violations, prosecuting violators and, in general, ensuring that the law is respected.

6. The data furnished by those Governments which responded to request for information for this study focus on the thrust of sanctions measures and the statutory and administrative procedures through which they are implemented. It would appear that for such Governments the term "monitoring" implies the existence of normal management procedures that are designed to verify that the measures adopted are being duly implemented, that they are being effectively administered and enforced, and that the normal operation of the law runs its course.

7. In turn, for the non-governmental organizations "monitoring" of sanctions against South Africa implies a continual surveillance of the implementation of almost every aspect of national and international measures, as well as a search for possible new measures.

8. The present report surveys the monitoring of the various levels of official sanctions, focusing primarily on intergovernmental and national measures. Taking together the varying interpretations of "monitoring" by different groups and the sum of such monitoring activities currently being carried out by Governments, intergovernmental organizations and non-governmental organizations, the term monitoring in its broadest sense refers to at least eight aspects of the sanctions process: (a) reviewing the extent of national and international sanctions via a comprehensive list of all official and market sanctions measures in force (and distinguishing the various political objectives behind them); (b) reviewing the modes of implementation of official measures by responsible authorities; (c) outlining the modalities and forms of enforcement of such measures by those authorities; (d) identifying loopholes in existing sanctions measures that weaken their effect; (e) measuring compliance and violations by the actors previously engaged in the economic activity targeted by the sanctions measures and identifying the forms of evading sanctions (sanctions busting); (f) measuring the economic and political impact of sanctions on South Africa; (g) examining South African strategies in response to sanctions; and (h) investigating those areas which make South Africa vulnerable to further pressure to secure the political objectives of sanctions.

9. While no single Government or non-governmental organization is monitoring all eight aspects, the combined monitoring activity of the United Nations system, Governments and intergovernmental agencies and non-governmental organizations makes reference to these eight aspects.

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III. MONITORING WITHIN THE UNITED NATIONS SYSTEM

10. The focal point on apartheid at the United Nations is the Special Committee against Apartheid, a subsidiary intergovernmental body of the General Assembly, which is constituted by 19 Member States. The Special Committee is responsible for monitoring developments in South Africa and the international response, including sanctions and other measures. The objective of those measures is to apply pressure on Pretoria to end apartheid and to engage in negotiations on a new constitution. The Special Committee publishes an annual report that includes an overview of developments in the area of sanctions and cases of alleged violations. Often on the basis of that and other reports of the Special Committee, the General Assembly adopts resolutions in which it calls upon Governments to adopt and to co-ordinate their sanctions programme, to monitor closely the implementation of sanctions, to adopt measures to close sanctions loopholes and to punish violations. In a few cases the resolutions mention specific cases of violations of sanctions and even mention the Member State involved. The Special Committee also makes written and oral representations to Governments, notably letters by the Chairman of the Special Committee to permanent representatives of Member States inquiring about initiatives concerning relaxation of sanctions, alleged inadequate implementation of existing measures or cases of violations that have not been prosecuted.

11. The Special Committee is serviced by the Centre against Apartheid, a United Nations office in the Department of Political and Security Council Affairs. The Centre collects data on sanctions and other measures from a wide variety of sources and publishes reports on various aspects of sanctions, either as reports of the Special Committee or as reports of the Secretary-General, depending on the mandate it receives. The Register of Entertainers, Actors and Others Who Have Performed in South Africa and the Register of Sports Contacts with South Africa are examples of the first category of publications. Reports on the implementation of national measures adopted against South Africa, on restrictive measures affecting externally dependent areas of the South African economy, on international financial pressure on the apartheid economy of South Africa, and the present report are examples of reports of the Secretary-General.

12. In addition to other intergovernmental bodies, the Centre services the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa, which was established by the General Assembly under its resolution 41/35 F of 10 November 1986. The Group maintains contacts with Governments and relevant organizations, considers information received on specific alleged violations and devotes particular attention to such cases of violations by eliciting clarificatory particulars from Governments deemed to be in a position to provide key information on each individual case, and by conducting its own research. The Group is building up its data base of relevant information, which will enhance its capacities for global monitoring of all aspects of the oil embargo against South Africa.

13. The United Nations Centre on Transnational Corporations, which reports to the Commission on Transnational Corporations, monitors and produces annual reports on the activities of transnational corporations in South Africa and on those measures adopted by Member States concerning that country. It maintains a data bank on

transnational corporations with investments in South Africa and publishes an annual register of these corporations. In 1985 and 1989 the Centre held public hearings on the activities of transnational corporations in South Africa and Namibia. At the most recent hearings (Geneva, 4-6 September 1989), the Panel of Eminent Persons concluded that the "inadequacy and unevenness with which existing sanctions against South Africa are monitored ... provided an important loophole that the [South African] Government and the business community have been quick to exploit". 3/ It made specific recommendations in this regard.

14. The Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended in 1973 that the Commission on Human Rights direct the Sub-Commission to appoint a Special Rapporteur to evaluate the adverse consequences for the enjoyment of human rights of assistance, in particular through investment of foreign capital and military aid, given to the régimes in southern Africa. Pursuant to the endorsement of that resolution by the Commission on Human Rights and the Economic and Social Council, the Sub-Commission appointed in 1974 Mr. Ahmad M. Khalifa as Special Rapporteur for the preparation of a study on the subject. The mandate of the Special Rapporteur has been endorsed annually by the Economic and Social Council (resolution 1990/34 of 25 May 1990), and biennially by the General Assembly (resolution 43/92 of 8 December 1988). Accordingly, the Special Rapporteur submits annually a report containing an updated list of transnational corporations operating in South Africa.

15. Among the United Nations specialized agencies the International Labour Organisation (ILO) has established a sanctions monitoring machinery. In accordance with the updated Declaration concerning Action against Apartheid in South Africa and Namibia and the Programme of Action against Apartheid, the ILO established in 1989 a Group of Independent Experts to follow up and monitor the implementation of sanctions and other action against apartheid throughout the world, in particular steps taken to circumvent such measures. The functions of the Group include investigating and evaluating the effects of present sanctions measures, undertaking feasibility and case studies on sanctions, regularly surveying and updating the state of world trade with South Africa and publishing, three times a year, the results of the research. The Group has decided at present to place emphasis on studies concerning the embargo on South African coal, effective financial sanctions and the severance of air links with South Africa. Interim reports on coal and financial sanctions have already been considered by the Group.

16. Apart from the work of the Group of Independent Experts, other monitoring work in ILO continues to be undertaken by the Committee on Action against Apartheid of the International Labour Conference and by the Committee on Discrimination of the Governing Body. For example, the Committee on Discrimination at the 246th session of the ILO Governing Body (May-June 1990) reviewed the most recent information supplied by Governments and employers' and workers' organizations regarding their action against apartheid, which also included sanctions. This information was provided by the ILO tripartite members in response to an Office questionnaire sent in August 1989, which also reflected the recommendations contained in the conclusions of June 1989 of the Conference's Committee on Action against Apartheid. Among those recommendations was a request for concerted targeted campaigns within the overall framework of efforts towards the adoption of sanctions.

17. Other United Nations bodies have not undertaken any specific sanctions monitoring activities. However, they adhere to United Nations resolutions in which they are called upon to refrain from doing business with South African enterprises or with companies that collaborate with the apartheid régime. Those bodies monitor the implementation of their own policies. For example, the World Health Organization (WHO) and the United Nations Population Fund (UNFPA) recalled in their submissions for the preparation of this report that they had adopted policies according to which they avoid any direct or indirect links with South Africa, particularly concerning the purchase of supplies and equipment, the investment of agencies' funds or the use of airlines and shipping lines. According to UNFPA, its Procurement Unit was doing everything possible to ensure that all suppliers and freight forwarders were complying with the conditions stipulated in the purchase orders. With regard to monitoring, UNFPA was doing its best to ascertain that airway bills from SAA (South African Airways) or bills of lading from South African shipping companies were not attached as shipping documents and that South African subcontractors were not being used. According to WHO, a recent check with its Treasury Unit and by its Internal Investment Review Group revealed 100 per cent compliance with the policy designed to combat apartheid, and that a recent check with its Supply Unit at Headquarters and its Regional Office for Africa confirmed compliance with that policy.

IV. MONITORING BY OTHER INTERGOVERNMENTAL ORGANIZATIONS

18. Monitoring of sanctions by intergovernmental organizations outside the United Nations can be an effective mechanism for reviewing the implementation and enforcement of sanctions against South Africa. By combining their resources into a single body, intergovernmental organizations can monitor not only the implementation of the measures adopted by their members but also the market sanctions in force. In addition, they can determine the economic and political impact of sanctions and make proposals for the future.

Commonwealth

19. While the actual implementation of the Commonwealth package of sanctions is the responsibility of its member States, the Commonwealth secretariat follows up measures implemented by them. With funding from the Australian Government, the Commonwealth has recently established an independent Centre for the Study of the South African Economy at the London School of Economics. The objective of the Centre is to monitor financial sanctions and South Africa's international financial linkages. When taken together with the expert studies previously commissioned by the Commonwealth Committee of Foreign Ministers on Southern Africa, 4/ this initiative appears to be the most ambitious official monitoring of sanctions and the only such effort cast within a strategy of sanctions.

20. The Commonwealth secretariat believes it has the moral responsibility to ensure that collective measures are applied. It prepares confidential background briefing papers on the non-implementation of any collectively agreed measure. This work is seen, according to a Commonwealth official interviewed on 27 June 1990, as "keeping the intelligence going". No data is formally supplied by member Governments, though much informal information is received.

21. The secretariat has two channels of contact with Governments: the Commonwealth Committee on Southern Africa, consisting of the High Commissioners in London, chaired by the senior High Commissioner and serviced by the secretariat, and the Commonwealth Committee of Foreign Ministers on Southern Africa, which would grant approval for the secretariat to pursue a particular matter.

22. On one or two occasions the secretariat has raised the question of an apparent lack of implementation of a measure with a government and received reports thereon. For instance, the Intergovernmental Finance Group noted that Singapore banks were still providing trade credits to South Africa and receiving South African bankers. When the issue was raised with the Singapore High Commissioner he stated that the practice had ceased. The secretariat takes that response as a reflection of a commitment by the Government of Singapore to comply with the agreed sanctions. In another instance, the participation of the Bank of Nova Scotia in a $600 million loan to the South African-controlled Minorco Group was raised with the Canadian Government.

23. The secretariat has no field staff to investigate such cases. Its monitoring work relies heavily on contacts with the Association of Western European Parliamentarians for Action Against Apartheid, (AWEPAA), the Shipping Research Bureau, the British Anti-Apartheid Movement and such other non-governmental organizations.

V. MONITORING BY GOVERNMENTS

24. The implementation of the sanctions programme of a particular Government is considered to be the responsibility of that Government. Governments do not normally establish special procedures to monitor the implementation of their own programmes since such monitoring is regarded as a normal function of government management. Most Governments consider that the adoption of a sanctions programme implies that the normal procedure for the administration and enforcement of such policy constitutes in itself a form of monitoring. However, a few Governments have instituted special mechanisms for monitoring aspects of their measures against South Africa and have established review and reporting procedures. A survey of such mechanisms adopted by South Africa's main trading partners follows.

A. United States of America

25. The particular constitutional delineation of powers between the legislative and executive branches of the Government of the United States of America has influenced the forms and means of official monitoring sanctions. The United States Congress plays a vital direct role in the monitoring process and even in the gathering of much of the information used in the monitoring by non-governmental organizations.

26. The 1986 Comprehensive Anti-Apartheid Act was enacted by both Houses of Congress over a Presidential veto. That circumstance appears to have created the impression in sectors of the legislative branch of Government that the

Administration charged with implementing the Act would be less than vigorous in applying the law. Subsequently, various organs of Congress have closely monitored the implementation of the Act and from time to time contested the manner in which aspects of the Act have been interpreted, implemented and enforced.

27. That Congressional monitoring has taken different forms. The Act required the Administration to submit to Congress a total of 12 reports on various dates within the year after enactment. 5/ One of those reports required the State Department to detail violations by other countries of United States sanctions. 6/ Members of the United States Congress have also disputed the Administration's allegedly restrictive interpretation of numerous clauses of the Act, which has reportedly allowed various South African imports into the United States. In one instance, litigation initiated by one congressman challenged the Treasury Department's interpretation of Section 309 (a) of the Act according to which the Act's prohibition on the importation of uranium ore and uranium oxide produced or manufactured in South Africa did not intend to establish a comprehensive ban on the importation of all forms of uranium from South Africa; that is, the Act's exclusion of uranium products did not cover uranium hexafloride. 7/ The Court did not rule on the merits of the case as it found that the plaintiff had no legal standing in the matter.

28. Congressional hearings have reviewed the Administration's implementation of the Act. 8/ The United States General Accounting Office (GAO) has conducted several reviews of the Administration's compliance with and implementation and enforcement of the Act. 9/ One such review significantly widened United States sanctions by confirming that South African gold bullion fell under the Act's ban on imports of the products of South African parastatals because the gold bullion was sold exclusively by the South African Reserve Bank. 10/

29. The United States Customs has primary responsibility for enforcing the import and export of products controlled under the Treasury Department's South African Transactions Regulations. It has initiated a number of investigations, although, according to reports of non-governmental organizations, the agency has not received additional resources to enforce the provisions of the Act as, for instance, is the case with bans related to narcotics. Thus, it has been claimed that Customs has not independently sought to develop sources of information on violations of the Act, but relies on straight tips provided by existing informants. 11/

30. The Commerce Department's Office of Export Enforcement uses pre-licence and on-site post-shipment checks to verify that controlled products (particularly United States-made computers) are not being used in violation of the Act's ban on the export of computers to apartheid-enforcing agencies of the South African Government. Twenty-seven per cent of all United States post-shipment checks made in 1987 were conducted in South Africa, more than any other country, and 34 of 45 pre-licence checks in South Africa indicated no potential violation. 12/ Convinced that effective enforcement "necessarily involves the systematic application of intelligence", 13/ in 1987 the Office devoted 17 per cent of its total analytical capacity to South Africa and requested the United States intelligence community and Customs to pay special attention to the possible illegal export, re-export or diversion of products of United States-origin controlled under the Act.

31. A GAO review concluded that the United States Government did not have "adequate tools to effectively enforce the provision" 14/ of the Act, which bans the import of items produced, marketed or exported by South African parastatals. Since the State Department has not issued a list of such products associated with parastatals, the United States Customs, according to the GAO, has been unable to enforce this ban effectively. Its enforcement consists primarily in ensuring that imports from South Africa contain the required certification.

32. The provisions of the Act on financial transactions are enforced by the Treasury's Office of Foreign Assets Control. The two basic enforcement mechanisms employed are licensing and reporting. As licence requests are not made public, monitoring of decisions by outsiders is difficult.

33. At the end of April 1988 the Customs Fraud Investigation Division had closed 7 suspected cases of import fraud while 13 cases remained open. An additional 28 cases were being investigated for suspected violation of export bans by Customs and three by the Commerce Department's Office of Export Enforcement. One case was prosecuted and a conviction obtained for an attempt to export technical manuals for military aircraft through a third country. 15/

B. Canada

34. The code of conduct for Canadian companies operating in South Africa is monitored by a Government-appointed Administrator who reports annually on observance of the Code by those companies as well as on their disinvestment from South Africa. 16/ Following the substantial 1988 increase in Canadian trade with South Africa, the Government appointed two "Government-industry task forces", which are investigating alternative sources of strategic minerals for steel production and new markets for Canadian sulphur exports. 17/ Following criticism of the participation by the Bank of Nova Scotia in a controversial $600 million loan to the South African-owned Minorco company to finance its bid to take over the British-based Consolidated Gold Field PLC, the Canadian Government instituted a review of the voluntary ban on new loans to South Africa. 18/

35. To implement Canada's voluntary ban on the export to South Africa of crude oil and refined petroleum products, steps have been taken to heighten awareness in the shipping sector of government policy on oil supply to South Africa. The External Affairs Ministry requested Statistics Canada to reclassify petrochemical products as manufactured chemical end-products so as to exclude them from the voluntary ban. 19/ The 1989 ban on high tech exports to South Africa was implemented by placing South Africa on the Area Control Lists. The ban on procurement by government department agencies from South Africa, except where necessary for purposes of the Canadian aid programme for southern Africa, is implemented via contractual obligation.

C. Australia

36. Sanctions by Australia against South Africa are implemented in three ways. First, government decisions banning all new investment by Government and public authorities are implemented by letters from the Minister of Foreign Affairs to Federal Government agencies and from the Prime Minister to state governments, seeking their co-operation. Australian banks have been asked to suspend the provision of direct or indirect new loans to South African borrowers. Second, customs regulations contain schedules of prohibited imports from and exports to South Africa. 20/ According to a letter from the Permanent Mission of Australia to the United Nations dated 12 June 1990, the government procurement of supplies from South African sources has been terminated by an Administrative Action stipulating the conditions of tender and contract.

D. New Zealand

37. According to a letter dated 18 April 1990 from the Permanent Representative of New Zealand to the United Nations addressed to the Secretary-General, the New Zealand Government has delegated primary responsibility for monitoring its sanctions to the Ministry of External Relations and Trade. In 1988, 10 import violations were recorded, the most serious of which involved the importation on a commercial scale of dried fruit, leading to a prosecution, a fine of $NZ 40,000 and forfeiture of the consignment.

E. Nordic States

38. The measures adopted by the Nordic States (Denmark, Finland, Iceland, Norway and Sweden) against South Africa operate within the framework of the Joint Nordic Programme of Action, which was first adopted in 1978 and further strengthened in 1985. The Programme was revised in 1988 as a result of the general trade boycott and other economic measures that were introduced by the Nordic countries against South Africa and Namibia. In addition, those States have adopted national legislation concerning, among other areas, the arms and oil embargoes as well as investments, and loans and trade credit guarantees.

39. The Government of Finland has implemented sanctions through various legislative and administrative acts. The 1987 Act adopted by the Government of Norway, which imposed an economic boycott against South Africa, contains a provision calling for the Government to assess compliance and enforcement after the first year of the law's operation (see E/C.10/1990/8, para. 50). The Ministry of Industry of Denmark publishes annual reports listing the investments and activities of Danish companies in South Africa. 21/ Danish police are investigating recent cases where goods from South Africa have been imported.

40. In Sweden, the activities of the subsidiaries of Swedish firms are monitored by the Board of Trade, which requires consistent reporting by those firms to comply with the provisions of the new investment ban. Swedish corporations are required to provide regular and detailed data on capital transactions between the parent

company and its South African subsidiaries, as well as on the wages and other employment and social conditions of the employees of their South African subsidiaries. On the basis of those reports the Board of Trade issues an annual public report to Parliament (ibid.) Following reports of violations, the Government allocated additional powers and resources to Customs authorities for inquiry "into sanctions busting and monitoring of the laws". Non-governmental organizations allege, however, that the law is still "too weak to permit prosecution". 22/ At the time of the enactment of the 1987 Swedish legislation on sanctions, a parliamentary sub-committee was charged with investigating the possibility of extending and strengthening these sanctions. The sub-committee investigated three broad areas: trade in services, trade between Swedish transnational corporations and South Africa (third country trade), and the continued operation of Swedish companies in South Africa. While recommending no changes in the areas of third country trade or existing Swedish investments, the sub-committee's report of March 1990 proposed a ban on certain services. 23/

F. European Community and its members

41. The European Community (EC) adopted two broad sets of sanctions in 1985 and 1986. Of the 1985 measures the oil export ban has not been implemented by the Community as such owing to a lack of consensus among its members. Furthermore, the ban on nuclear co-operation has led to divergent interpretations and implementation of the measures adopted by member States, since some States include uranium imports under such measures while others do not. The 1986 measures were also adopted and hence implemented in different ways. The Krugerrand import ban was a decision of the European Council. Since this ban was imposed, such imports have ceased. The Economic Commission official responsible for the monitoring of those measures considers, therefore, that the monitoring of that ban is no longer necessary.

42. The ban adopted by the Economic Commission on the import of South African coal and steel was limited. Since the 1986 EC ban on the import of South African iron and steel is based on that measure, its scope is also limited. The ban does not cover ferro-alloys, nor does it cover contracts signed before the ban came into force. When that measure was adopted in 1986, it was expected that South African imports would disappear from Europe in three years, yet the monthly average is still one third of the pre-1986 levels. Questions introduced in the European Parliament have raised the possibility of fraud.

43. The EC measures concerning iron and steel from South Africa are based on customs schedules and leave little room for interpretation. Ireland's imports of iron and steel are subject to the issuance of surveillance documents, which are not granted for imports of South African iron and steel. The United Kingdom implements the ban under a catch-all administrative order and amendment to the Open General Export Licence containing a schedule of products covered.

44. The EC ban on new investment was adopted by consensus and has been implemented in different ways by member States. The Netherlands enacted new legislation to implement the ban. The exemptions for the replacement of existing capital and positive investments to assist blacks require Government approval on a case-by-case

basis. The Central Bank of the Republic of Ireland refuses all applications for new investment in South Africa. New investments from France require the authorization of the Minister of Economy and Finance. All Greek foreign investments require authorization of the Foreign Investment Committee under the Bank of Greece, which does not grant authorization for investments in South Africa. The Bank of Portugal has strict instructions not to authorize investments that are being channelled to South Africa. The United Kingdom and the Federal Republic of Germany 24/ implement the ban via recommendations on a voluntary basis. To encourage compliance with the ban, the Government of Belgium sent letters on the subject to various business groups asking them to inform their members of the contents.

45. According to an EC official who was interviewed on 21 June 1990, there is no overview by the EC of national implementation. These measures are monitored by an official in the Economic Commission, working on trade statistics supplied by member States. If this official detected a problem or non-implementation of a measure, the Economic Commission would seek an explanation from the member State. This circumstance has not yet occurred.

46. The licensing requirement is often used for monitoring the implementation of sanctions. In the case of Belgium, exports of oil and oil products from Belgium require compulsory licensing, and licences are not issued for exports to South Africa. Imports of armaments and paramilitary goods from South Africa are also subjected to licences. However, no specific legislation prohibits the export of armaments and related items to South Africa and a number of violations of the arms embargo have been recorded by anti-apartheid organizations. 25/ Administrative investigations into arms embargo violations have not yet led to prosecutions.

47. Ireland also implements the arms embargo through a system of licensing. Computer sales to South Africa are likewise subject to licensing, requiring end-user certificates to ensure that such items are not for use by the South African security forces or apartheid agencies. 26/

48. Italian oil exports are subject to authorization by an ad hoc committee that denies authorization when the destination or third country is listed as South Africa. Export of armaments, paramilitary and sensitive items are also subject to authorization that is not granted with respect to South Africa. The ban is monitored by a special committee. 27/

49. The Government of the Netherlands has a "gentlemen's agreement", according to which companies operating on the Dutch part of the continental shelf do not export oil to South Africa. The arms embargo is implemented via a licensing system. 28/

50. The United Kingdom implements the arms embargo and the ban on exports of sensitive equipment (computers and other high technology items) and nuclear exports through statutory instruments that have the force of legislation. 29/ Items in that area cannot be exported to South Africa without an export licence. Those orders are implemented by the Department of Trade and Industry in consultation with the Foreign Office and the Department of Defence. Exports of sensitive equipment require an end-user certificate affirming that the buyer is not covered by the

sanction. There is no on-site inspection by consular officials. The ban on nuclear co-operation does not cover the processing of South African uranium, according to an interview held on 25 June 1990 in the South African Department of the Foreign and Commonwealth Office.

51. A number of violations of the arms embargo have led to prosecutions. The British Anti-Apartheid Movement claims that the interpretation of the arms embargo and of the sensitive equipment ban is rather narrow and has permitted the sale of sensitive equipment to South African institutions connected to the military and police, as well as the importation of South African manufactured military equipment. 30/

52. The Policy Guidelines of the Government of the United Kingdom limit the sale of United Kingdom North Sea oil to its partners in the EC and to members of the International Energy Agency. There is no ban on the transport by British vessels of non-United Kingdom oil. The guidelines are not statutory measures and it is not an offence to export oil from the United Kingdom to South Africa.

53. The British ban on Krugerrand imports is implemented through an administrative directive under existing legislation, namely a "Notice to Importers", which imposes licensing restrictions. The United Kingdom does not restrict the importation of other gold coins that may contain South African gold.

54. The Federal Republic of Germany has agreed to a cessation of oil exports to South Africa within the framework of the EC. The Shipowners Association was advised of the decision but the ban is not implemented by law or regulation. The Government of the Federal Republic of Germany "continuously monitors" oil exports. 31/ A ban on the export of armaments, paramilitary and sensitive equipment to the South African army or police is implemented by a requirement of compulsory licensing via the Federal Office of Economics. Applications for the export to South Africa of any goods listed in part I, section A of the export list are rejected without exception. 32/

55. Non-governmental organizations from the Federal Republic of Germany allege that only one violation of the arms embargo has led to a conviction. 33/ In a well known case, the delivery of submarine blueprints to South Africa by two firms, namely, Howaldtswerke/Deutsche Werft AG and Ingenieurkontor Luebeck, based in Kiel (Federal Republic of Germany), led to an investigation in 1986 by the Office of the Public Prosecutor at Kiel Regional Court. In a letter dated 28 June 1990 from the Chargé d'affaires a.i. of the Permanent Mission of the Federal Republic of Germany addressed to the Chairman of the Security Council Committee established under resolution 421 (1977), it was stated that formal proceedings had been instituted in 1990 against individuals responsible. An assessment on whether formal charges would be laid was awaiting a decision regarding the question of whether there existed grounds for suspicion of a criminal violation of article 34 of the Foreign Trade and Payments Act and article 353 b of the Criminal Code (violation of a special obligation for secrecy).

56. In 1987 the Bundestag (Parliament) of the Federal Republic of Germany had appointed a committee to investigate this case. The committee issued a report with dissenting opinions by the opposition delegates in December 1989. In February 1990, a Bundestag resolution removed certain legal obstacles that had hindered the committee's investigations and the committee resumed its inquiry.

57. In the same letter it was stated that a visit to South African shipyards and ports by a parliamentary delegation had found nothing to indicate the actual and planned construction of submarines. However, reports in the press of the Federal Republic of Germany have indicated that the "parliamentarians may have searched at the wrong premises" and did not visit at least one shipyard. 34/ The South African President has assured the Chancellor of the Federal Republic of Germany that South Africa had not built and was not now building submarine vessels according to German plans.

58. It appears that other countries of the North Atlantic Treaty Organization (NATO) are monitoring the affair closely. The Government of Norway has instructed its representative at its Embassy in the Federal Republic of Germany to "intensely care about the possible violation of the United Nations arms embargo". 35/ A senior Norwegian official indicated in a press interview that Norway was considering taking the matter to NATO. The issue is also being followed closely by the Security Council Committee on the arms embargo and the Oslo-based World Campaign against Military and Nuclear Collaboration with South Africa. 36/

G. Japan

59. Japanese companies have been requested to "refrain from importing arms from South Africa". 37/ There is also a ban on co-peration with or sales to South Africa in nuclear matters. The Ministry of International Trade and Industry has requested major trading companies to present their import plans in an attempt to prevent a surge in trade with South Africa, and has "requested industries concerned to abstain voluntarily from increasing imports of iron ore, uranium, coal, and such other products from South Africa". 38/ Since 1969, direct capital investment in South Africa has been prohibited although Japanese corporations have established franchise-holding subsidiaries for manufacturing and assembling. An official request exists to restrict financial loans but the restrictions have been rather undefined. It is possible, thus, that the bulk of credit to support Japanese trade with South Africa is provided from internal sources by the Japanese trading companies themselves. 39/

H. Switzerland

60. While Switzerland has not imposed sanctions against South Africa, the Swiss Government seeks to prevent its territory from being used to circumvent sanctions undertaken by other countries. A working group monitors trade between Switzerland and South Africa to ensure that it follows normal patterns and that unusual conditions do not develop. In addition a multi-party parliamentary committee investigates cases of the violations by Swiss companies of other countries'

sanctions. However, reports continue to emerge that Swiss corporations are involved in indirect trade of gold from South Africa. The matter will be pursued in the next session of parliament. 40/

I. Other countries

61. According to information received from the Permanent Mission of Singapore to the United Nations, Singapore's 1965 ban on imports from South Africa is implemented under a control of imports and exports ordinance. End-user clauses are required to prevent shipping companies owned by the Singapore Government from transporting oil to South Africa and any Singapore-registered ship that violates the ban is liable to the cancellation of its registration.

62. India was the first country in the world to impose sanctions against South Africa, notably in 1946. It has a total ban on trade, which covers oil, arms, computers and other technology. A 1985 investigation by the Indian Directorate of Revenue Intelligence revealed a "flourishing air and sea trade with South Africa" 41/ with goods being routed via various southern African countries. Thirteen Bombay-based exporting firms were served notices.

63. The Government of Argentina monitors compliance with the oil embargo "using machinery associated with the purchase and sale of foreign exchange and levying of import and export duty to prevent any violation". 42/ While Argentina has imposed no sanctions against South Africa, investigation by its Customs authorities were instrumental in revealing attempts to smuggle South African apples into Denmark and the Federal Republic of Germany under an Argentinian label. 43/

VI. MONITORING BY NON-GOVERNMENTAL ORGANIZATIONS

64. Monitoring is carried out widely and at different levels by non-governmental organizations. In almost every country that has imposed sanctions at least one anti-apartheid organization monitors closely the implementation of the sanctions programme of its country's Government. Other groups focus on monitoring international sanctions against specific products.

65. Some non-governmental organizations carry out monitoring work in a spirit of neutrality, seeking simply to compile facts on certain issues rather than take a position for or against sanctions. 44/ However the overwhelming majority of non-governmental organizations involved in monitoring sanctions do so with a clear and explicit political purpose. These are advocacy groups that believe strongly that sanctions have a vital role to play in assisting the process towards the eradication of apartheid. Many express their dismay at what is regarded as the tardy, partial and unco-ordinated nature of the sanctions imposed by their own Governments. Most denote their concern at what they perceive as the unwillingness of Governments to devote the necessary resources to make effective their sanctions programme against South Africa. In that context, many groups point to the vast differences between the priority, resources and intergovernmental co-ordination most Governments have accorded to the implementation and monitoring of various

forms of embargoes against particular countries and those allocated to sanctions against South Africa.

66. Almost every anti-apartheid organization in the world, as well as a wide range of other non-governmental organizations, monitor not only the measures imposed by their own Governments, but the broad range of official and market sanctions measures throughout the world. Those non-governmental organizations regularly exchange information and occasionally coalesce in regional and international bodies to co-ordinate their activities, including monitoring. Three international workshops on sanctions have led to exchanges between anti-apartheid organizations from all five continents and have significantly improved the capacity of individual non-governmental organizations to monitor the state of sanctions against South Africa. A 1990 workshop decided that specific anti-apartheid organizations should act as a clearing house for information on particular areas of sanctions. 45/

67. In a number of instances, non-governmental organizations in the same region have combined their resources to enhance their monitoring. Fourteen European non-governmental organizations have formed the Liaison Group of National Anti-Apartheid Movements in the Countries of the European Community to monitor aspects of the EC sanctions and have followed closely recent proposals that some of those measures should be eased. Nordic anti-apartheid organizations established in 1989 a joint monitoring bureau, namely, the Nordic Foundation on Southern Africa (see para. 81).

68. Much monitoring is based on the common perception that even the most far-reaching sanctions measures adopted by Governments lack adequate follow-up and the necessary allocation of resources by Governments to effect such measures. A primary objective of such monitoring is to persuade Governments to devote more resources to enforcing their sanctions, closing loopholes and punishing violators, thereby reducing the opportunities and raising the cost of sanctions busting.

69. The collective effort of the organizations involved in monitoring covers all eight of the elements of monitoring discussed above. Some groups have set up standing monitoring committees. For instance, following the passage by the United States Congress of the 1986 Comprehensive Anti-Apartheid Act, the Southern Africa Project of the Washington-based Lawyers' Committee for Civil Rights under Law established a sanctions monitoring group to monitor the implementation and enforcement of the sanctions mandated in the Act. Project staff and volunteer specialist attorneys produced an in-depth evaluation to date of the national sanctions programme against South Africa. 46/ The report also compared the implementation of United States sanctions against South Africa to United States sanctions against other countries. Where it deems this necessary, the Southern Africa project of the Lawyers' Committee also brings issues of sanctions compliance to court.

70. However, few of the non-governmental organizations that carry out monitoring work have the financial resources to conduct ongoing across-the-board follow-up on all eight aspects of monitoring by permanent staff and specialists. The monitoring activities of most of the organizations tend to concentrate only on one or a few of the eight aspects of monitoring or place particular attention on specific

products. Five aspects of monitoring appear to be the major focus of the monitoring efforts of NGOs: the extent of sanctions; implementation; loopholes; enforcement; and violations (sanctions busting). Some monitoring work is also done on the impact of sanctions and several organizations, in addition, do extensive work on identifying other pressure points on which South Africa is vulnerable to further sanctions. In many countries, particularly those which do not have a single dominant anti-apartheid group or coalition, a wide variety of non-governmental organizations carry out such monitoring work, which often produces an informal division of labour, with particular groups monitoring specific sanctions. Several of these groups are linked to religious organizations. Many produce annual reports that list their monitoring activities.

71. Monitoring by non-governmental organizations of those five aspects of sanctions, among others, tends to be divided into two broad patterns: monitoring of the measures adopted by a particular country and monitoring of international sanctions against a specific product or set of products. The following information is far from complete; it reflects only the material provided by the non-governmental organizations themselves and other material found in the course of research. A great deal of such monitoring activity, especially in France, the Netherlands, Switzerland, the United States and other countries, is not presented in this report owing to a lack of available data.

A. Country-oriented monitoring

72. The vast majority of national monitoring by NGOs focuses on compliance, enforcement and violations of sanctions, in particular of the oil and arms embargoes, as well as financial sanctions and other trade sanctions.

73. In the United States, the Inter-Faith Center on Corporate Responsibility and the California-Nevada Inter-Faith Committee on Corporate Responsibility focus their monitoring on the activities of transnational corporations in South Africa, including banks. The Committee maintains a regular flow of information and analysis on disinvestment and on the provision of loans and trade credits to South Africa, and conducts campaigns thereon. The Center has elaborated a series of background papers on South Africa's external debt and on its financial links with the outside world. Both organizations have provided expert testimony to United Nations hearings on the subjects concerned.

74. The British Anti-Apartheid Movement (AAM) has reported various violations of sanctions, in particular concerning the arms embargo, the oil embargo and the export of sensitive equipment. 47/ In a report entitled "How Britain Arms Apartheid", AAM noted that the way in which the Government of the United Kingdom interpreted the arms embargo had allowed for the approval of licences for export of radar equipment to South Africa. Its identification of three British firms marketing South African military communications equipment has not led to official action, according to the Movement. AAM has also expressed concern about the promotion by the Department of Trade of the sale of computers and security equipment to South African institutions closely linked to South Africa's security and military services, such as the Council for Scientific and Industrial Research.

AAM has identified five companies involved in oil shipments to South Africa. According to AAM, 33,000 tons of officially recorded steel products from South Africa entered the United Kingdom despite the EC ban.

75. AAM has also devoted attention to monitoring the economic and political impact of sanctions. A detailed memorandum to the Commonwealth Committee of Foreign Ministers on Southern Africa, entitled "Constrained by Sanctions: The Apartheid Economy in 1988", evaluated the impact of sanctions until the end of 1988, concluding that despite the limited, partial and unco-ordinated nature of the measures adopted to date, the South African Government's actions were beginning to be constrained by sanctions factors beyond its control. The study included a list of British companies that were in breach of sanctions through new investments in South Africa and through the participation in trade missions to South Africa and the promotion of tourism to that country.

76. A great deal of monitoring of the Nordic trade boycott on South Africa is carried out in all the Nordic countries. In Denmark, the Landskomiteen Sudafrika-Aktion (National Committee-South Africa Action) (LSA) has monitored the implementation, compliance with, enforcement and impact of the Danish sanctions legislation. It has published a detailed study 48/ that has identified three forms of sanctions busting in Denmark: trade through third party countries (most frequently the United Kingdom and the Federal Republic of Germany); trade through Danish subsidiaries abroad; and fraudulent change of labels or the documentation on country of origin of South African produce. LSA has reported violations of the trade embargo by 10 companies, most frequently carried out through re-exporting via third countries. 49/ Its monitoring of Danish sanctions has also highlighted loopholes that allow, among other things, Danish shipowners to continue service to South African ports, the maintenance of a South African Airways office in Copenhagen, and the promotion of tourism to South Africa. 50/ According to LSA, the Ministry of Industry has tightened up its requirements on reporting of Danish companies that maintain investments in South Africa.

77. In a letter addressed to the Centre against Apartheid, LSA expressed the belief that monitoring was essential as Danish authorities only investigated such violations under pressure from the anti-apartheid movement or after information had been published in various media. For that reason LSA had collaborated with other Nordic groups in the setting up of the Nordic sanctions bureau (see para. 81).

78. Since early 1987, suspecting more widespread attempts of circumventing the trade boycott, EELAK-Boycott Committee, a Finnish NGO monitoring group, and the Finnish Africa Committee, have intensified their investigations. Although the groups remain convinced that violations are occurring, their reliance on volunteers makes it difficult to obtain concrete evidence for use in court. The Government of Finland, according to these groups, has been reluctant to become involved in detailed monitoring work and the Minister of Trade and Industry has declared that "it is impossible to follow circumvention of the trade boycott". 51/

79. In an article entitled "Loopholes in Norwegian Boycott" published in Nordic Newsletter No. 1/89, the Norwegian Council for Southern Africa (FSA) pointed out that a temporary dispensation for the import of manganese had resulted in an

increase of those imports. Furthermore, FSA expressed concern that there was no time-limit on the temporary dispensation. Other violations revealed by the monitoring of this group include the importation of South African avocados through France, of films and videos, and the sale of an oil rig via a Norwegian broker to South Africa. Two travel agencies have also illegally sold tours to South Africa. 52/

80. In Sweden, the Isolera Sudafrika Kommitten (Isolate South Africa Committee) (ISAK) conducts extensive research on sanctions, and particularly on sanctions-busting. Two detailed reports, entitled "Sanctions Busting" and "Staying on at Any Cost", have been published. They highlight gaps in the implementation of Swedish sanctions and in the monitoring of the sanctions laws, and resulted in Swedish Customs being given extended rights and economic resources to make special investigations into sanctions busting and monitoring of the laws. Although this official initiative has led to the discovery of obvious cases of sanctions busting, ISAK claims in a report entitled "Sanctions and sanctions busting: research intensified" that the law is too weak to permit prosecution.

81. In December 1989, a coalition of Nordic groups set up a sanctions bureau named the Nordic Foundation on Southern Africa. According to information received from ISAK, the bureau's objectives are to control observance of existing sanctions, to provide evidence of violations, to produce information and analyses about sanctions in an international and Nordic context, to assess existing legislation and to suggest co-ordination between Nordic countries and necessary amendments. A proposal by members of the Nordic Parliamentary Council that the Council grant financial support to the Foundation was rejected by a majority vote on the grounds that the conduct of the matter by national authorities was sufficient. The first meeting of the Foundation's board decided to concentrate its resources on research concerning Nordic coal and manganese imports as well as on trade via Eastern European countries.

82. In Canada the Task Force on Churches and Corporate Responsibility maintains a research unit that monitors the implementation and enforcement of most aspects of Canadian official sanctions. The Task Force maintains a stream of queries and requests to the Canadian Government concerning the implementation of sanctions. It has, thus far, monitored four cases of possible violations of the voluntary ban on new investment, one of which has been investigated by the External Affairs Ministry, with unknown results. The Task Force also monitors loopholes in the ban.

83. Other Canadian anti-apartheid groups carry out a variety of monitoring work. In collaboration with the United Church of Canada, the Centre d'information et de documentation sur le Mozambique et l'Afrique australe publishes a regular monitoring bulletin, entitled "Sanctions Barometer", in English and French. This publication provides information on international sanctions, on Canadian trade and sanctions, on sanctions busting, on the monitoring and sanctions activities of Canadian and international groups, on South African reaction to sanctions and on resource materials. An alliance of western Canadian groups, the Calgary-based Committee against Racism, maintains a sulphur project, which monitors the export of Canadian sulphur - including those of the state-owned Petro-Canada group - to South Africa. Partly due to these activities a Government-industry task force was created to find alternative markets for Canadian sulphur.

84. The Irish Anti-Apartheid Movement informed the Centre against Apartheid that it monitors the press for information on sanctions violations and regularly requests its members to report on sanctions-breaking activities. Those activities focus particularly on the illegal import of South African fruit and vegetables. According to the Movement, customs and excise authorities always take action when requested to do so and have been called into shops and supermarkets to confiscate tinned fruit. One case of the illegal newspaper advertisement for Krugerrands was also reported. The organization is investigating a substantial increase in fresh fruit imports from Swaziland. Questions in Parliament drew the response that South African fruit was not entering Ireland. 53/

85. Allegations by Greek non-governmental organizations that Greek tankers had delivered oil to South Africa in violation of a Government ban led to Government investigations and to the conclusion that "no Greek tanker violated the embargo". 54/ However, research on the oil embargo against South Africa conducted by the Amsterdam-based Shipping Research Bureau suggests that certain Greek shipping companies have played a major role in shipping oil to South Africa.

86. According to information received from the Austrian Anti-Apartheid Movement, it has established a network of "anti-apartheid detectives" to monitor Austrian economic collaboration with South Africa and report on violations of existing sanctions. According to the Movement, the way in which the Government of Austria interprets the arms embargo has allowed for the transfer of technology and the delivery of sensitive equipment and plant construction plans to South Africa by Austrian companies as well as the establishment of joint ventures. 55/

87. The Association of Western European Parliamentarians for Action Against Apartheid (AWEPAA) publishes information regularly on sanctions measures and updates its chart of all measures taken by the Western European States.

B. Product-oriented monitoring

88. Various specialized non-governmental organizations also monitor sanctions against specific sets of products. Those organizations tend to have wider international links and information sources than the groups that monitor national sanctions.

89. The Amsterdam-based Shipping Research Bureau was established in 1980 by two Dutch non-governmental organizations when it became clear that "a monitoring unit was an essential condition to develop an effective oil embargo". 56/ While the Bureau monitors oil shipments to South Africa and the ways in which the oil embargo is circumvented, it also conducts research on other measures linked to the oil embargo. It informs Governments, intergovernmental and non-governmental organizations of its findings with the intent that those bodies would be able to make effective and optimal use of the research results. Between 1980 and 1990, the Bureau published six main reports, detailing oil deliveries to South Africa from 1979 to the beginning of 1990, the companies involved in this trade, and the countries or regions from which these tankers sailed to South Africa. The Bureau also supplies information to the Intergovernmental Group to Monitor the Supply and

Shipping of Oil and Petroleum Products to South Africa. On the basis of that and other information obtained from various sources, the Group contacts Governments allegedly connected with the supply and shipping of oil and petroleum products to South Africa and requests information thereof.

90. In its latest report, entitled Fuel for Apartheid, the Bureau stated that between January 1979 and January 1990 over and above its crude oil bill of about $29 billion, South Africa had to spend at least $25 billion to overcome the direct and indirect effects of the oil embargo. The Bureau has released several special surveys on particular companies and other issues. Its quarterly newsletter, now entitled "Shipping Research Bureau Newsletter", which includes the "Newsletter on the Oil Embargo against South Africa" and the "Coal Monitor", supplies regular data on these issues to the media, Governments and other organizations. Since March 1989 the Bureau has also investigated shipments and exports of coal from South Africa to its main importers in Europe, the Middle and Far East, and Latin America.

91. The Bureau has been also commissioned to conduct research for various intergovernmental and non-governmental organizations. In addition to its contribution to the work of the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa, it is preparing a report for ILO on the flow of South African coal exports and the monitoring of existing restrictive measures concerning coal. On behalf of AWEPAA, the Bureau is analysing data on the import of coal by the member States of the EC.

92. The Oslo-based World Campaign Against Military and Nuclear Collaboration with South Africa monitors violations of the mandatory arms embargo imposed by Security Council resolution 421 (1977). The World Campaign contacts Governments and the United Nations, in particular the Security Council Committee established by resolution 421 (1977), concerning violations. In addition, it has provided expert testimony on the subject to the Special Committee against Apartheid, to the former Council for Namibia, to such intergovernmental organizations as the Commonwealth Committee of Foreign Ministers on Southern Africa, the Organization of African Unity and other bodies, and has recommended the adoption of national and international measures to enforce the arms embargo.

93. The World Campaign has provided reports of violations of the arms embargo involving, among others, the United Kingdom firm Plessey Ltd in connection with the alleged supply to South Africa of a radar system, including a digital computer of United States origin, 57/ a Belgian firm in relation to the supply of components for South Africa's Mirage aircraft through a third party arms deal, the activity of a former chief scientist of the Israeli Defence Ministry, in connection with exchange of nuclear know-how, and South African exports of armaments to such countries as Chile, Taiwan Province of China, and the Republic of Korea. 58/ Most recently, the World Campaign has followed closely the case of the illegal sale of submarine blueprints to South Africa by corporations based in the Federal Republic of Germany and has repeatedly brought the matter to the attention of the United Nations, NATO Governments and other interested parties.

94. Gold is by far the single most important source of foreign exchange revenue for South Africa, accounting for about 30 per cent of export earnings. Until recently most proponents of sanctions have felt that sanctions against South African gold were not feasible given the primary role of gold in the world economy. Based on extensive monitoring of international gold markets by researchers familiar with international metal markets, the London-based World Gold Commission, an anti-apartheid group, in a 1988 document entitled "A note on a possible gold sanction", proposed a market-led sanction that would maintain the price of gold while sharply reducing South Africa's earnings from its main export.

95. The Commission has set up monitoring groups in Australia, Italy, Switzerland, the United Kingdom and the United States. Its activities have probably influenced the decisions of the Australian Government and the United States General Accounting Office (GAO) to conduct research on South Africa's gold trade. A GAO study on the subject (GAO/NSIAD-89-232) confirmed the Commission's contention that since South African gold was marketed by a South African parastatal, namely, the South African Reserve Bank, its gold bullion fell under the terms of the 1986 Comprehensive Anti-Apartheid Act. As a result of the United States embargo on South African gold bullion, South African gold is being sold at a discount of around $2.00 per ounce on international markets. The GAO study also investigated the feasibility of a United States sanction on all South African gold products. A broadening of sanctions on gold, according to the Commission's "Progress Report", would have an impact on the substantial imports of South African gold by Switzerland and Italy. The Commission considers that its work has also influenced the investigations of the Swiss parliamentary committee enquiring into possible Swiss violations of other countries' sanctions (see para. 60).

96. Other non-governmental organizations specializing in research and monitoring of specific products or services include the London-based End Loans To South Africa (ELTSA), which follows closely bank loans to and other financial links with South Africa. In March 1990 the non-governmental organization International Workshop on Sanctions, which was held at Drobak, Norway, designated ELTSA as the international clearing house for monitoring data in those areas and decided that ELTSA should publish such information in its newsletter.

97. The research and monitoring work of the New York-based American Committee on Africa focuses, among other issues, on transnational corporations and disinvestment. The Committee has been designated as an international NGO clearing house for monitoring data on companies maintaining links with the South African economy. A study of air services to South Africa and sanctions-busting airlines has been published by the Holland Committee on Southern Africa.

98. Other monitoring of sanctions has been carried out by NGOs whose major focus of activity is not South Africa. The International Confederation of Free Trade Unions maintains a Monitoring Unit on Sanctions and a Working Party to promote a co-ordinated approach towards an embargo of South African coal. It produces a "sanctions graph", which is made available to affiliated national trade union centres.

99. Jane's Annual Report on South Africa includes much material on violations of the arms embargo. The Stockholm International Peace Research Institute has published an important review of the workings of the mandatory arms embargo against South Africa, which concludes that "the South African embargo case provides a catalogue of disimplementation methods that ought to be taken into account if similar cases appear in the future". 59/ The study names corporations from several countries as having played a role in the development of South Africa's military industry. 60/

VII. CONCLUDING REMARKS

100. The present report suggests that, with some exceptions, the monitoring of the implementation of sanctions undertaken by Governments is overall limited. Enforcement agencies are not usually given additional resources to monitor compliance and ensure enforcement of sanctions programmes. A major element in such enforcement is the intelligence available to enforcement agencies, which, in the case of sanctions against South Africa, is not readily available. Data also suggest that non-governmental organizations are generally a useful source of information about sanctions violations and play a significant role in gathering information and intelligence that can assist Government agencies in the enforcement of sanctions programmes. Gathering the requisite information for consistent enforcement of existing sanctions programmes does not appear to have been assigned high priority among a number of the Governments, according to available data.

101. Such priority, particularly concerning overall scrutiny or possible violations of sanctions, appears to be affected by the existing domestic political consensus over the adoption of sanctions, the Government's perception of the role of sanctions in the process of dismantling apartheid, the form and legal force of the mode of adoption of the sanctions programme (by legislation, decree, regulation, administrative action, voluntary measure), the level of administrative co-ordination and jurisdictional precision in the implementation of measures, the resources given to government agencies responsible for enforcing sanctions, including instructions given to intelligence agencies, and the degree of public interest in following up such measures once they have been adopted. One of the most important factors seems to be the Government's perception of the role of sanctions as an instrument to apply pressure towards the elimination of apartheid. 61/

102. A sustained monitoring of national and international measures is undertaken by non-governmental organizations. They have highlighted important loopholes in sanctions measures and in many cases have been the prime source of information on violations. The monitoring and the research on sanctions conducted by such organizations have sometimes had an impact on the implementation and enforcement of sanctions in a particular country, have induced some governmental agencies to effect their sanctions programmes and, in some other cases, have influenced Governments to widen the scope of their sanctions and/or to commit additional resources to their enforcement.

103. The product-oriented monitoring by non-governmental organizations has been quite vital in revealing sanctions violations and such groups have acquired considerable expertise on the subject. Facts or trends revealed by them have sometimes led to a widening of the scope of existing sanctions measures or to the adoption of new measures and the identification of new vulnerable pressure points.

104. It should, however, be noted that most non-governmental organizations have limited financial and personnel resources; they usually rely on volunteers and they do not have ready access to the media. In that context, several organizations have assumed a research and policing role beyond their limited capacities.

105. It would appear that the rather weak co-ordination in the application of sanctions and the different approaches to their implementation among Governments have created a number of loopholes that can and have been used to evade sanctions and reduce their effect. This would seem to be true with reference both to the national measures adopted by individual States and to the measures adopted jointly by a number of Governments.

106. On the strength of the information provided by the United Nations agencies and certain Governments and intergovernmental and non-governmental organizations, that analysis would suggest that, despite shortcomings, the combined initiatives provide an important response mechanism to the objective of monitoring the application of sanctions against South Africa. Since the great majority of States have not replied to the General Assembly's request that they provide information on official procedures that they may have instituted to monitor the implementation of sanctions in their respective countries, it has not been possible to present a global picture of the situation. The monitoring process would be greatly enhanced if all States adopted enforcement mechanisms to prevent the violations of those measures. Moreoever, there is the need for the issuance of periodic reports on the progress made in the monitoring of the implementation of sanctions.

Notes

1/ For a review of measures to monitor sanctions, see the report entitled "Sanctions against South Africa" (E/C.10/AC.4/1989/4 and Corr.1); Implementation of national measures adopted against South Africa: report of the Secretary-General (A/43/786); Restrictive measures affecting externally dependent areas of the South African economy: note by the Secretary-General (A/44/555 and Corr.1); and Joseph Hanlon, editor, South Africa: The Sanctions Report. Documents and Statistics, a report from the Independent Expert Study Group on the Evaluation of the Application and Impact of Sanctions Against South Africa, prepared for the Commonwealth Committee of Foreign Ministers on Southern Africa (Commonwealth Secretariat in association with James Currey, London, 1990) (hereafter Hanlon 1990).

2/ The information in the report is drawn from a wide variety of sources. A note verbale was sent to all States Members of the United Nations on 5 March 1990, requesting a response by 15 June. Replies were received from Antigua and Barbuda, Australia, Belize, Finland, Iran (Islamic Republic of), Israel, Japan, Mali, Mauritania, Mexico, New Zealand, Norway, Qatar, Singapore, the Ukrainian Soviet

Socialist Republic and the United Republic of Tanzania. Requests for information were also sent to non-governmental organizations, of which the following replied: Austrian Anti-Apartheid Movement, Danish National Committee (LSA, South Africa Action), Danish Seaman's Union, HART (New Zealand), Isolate South Africa Committee of Sweden, Japan Asia, Africa and Latin America Solidarity Committee (AALA), Lawyers' Committee for Civil Rights under Law, Madrid Anti-Apartheid Committee, New Zealand Citizens Association for Racial Equality, Shipping Research Bureau, South African Non-Racial Olympic Committee, Holland Committee on Southern Africa, Irish Anti-Apartheid Movement, New Zealand Anti-Apartheid Monitor, Task Force on the Churches and Corporate Responsibility (Canada), and the World Gold Commission. In addition, independent research was carried out by the Centre against Apartheid; and an expert conducted interviews with officials of two Governments, the European Community, the Commonwealth and a number of non-governmental organizations. The Centre had also access to reports and draft papers prepared by a number of intergovernmental and non-governmental bodies.

3/ Transnational Corporations in South Africa: Second Public Hearings 1989 (hereafter ST/CTC/102). The Panel of Eminent Persons convened for the second hearings was constituted by Canaan Banana (Chairman), Judith Hart (Co-Chairman), Kamal Hossain (Rapporteur), Abdlatif Al-Hamad, Francis Blanchard, Anatoly Gromyko, Mochtar Kusuma-Atmadja, Flora MacDonald, Edward Seaga, Wole Soyinka and Lowell Weicker (United Nations publication, Sales No. E.90.II.A.6).

4/ Keith Ovenden and Tony Cole, Apartheid and International Finance. A Programme for Change (Commonwealth of Australia, Victoria, 1989); Banking on Apartheid. The Financial Links Report (Commonwealth Secretariat, London, 1989) and Hanlon 1990.

5/ Four of the reports were completed within a week of the deadline. Three others were two or three weeks late, four were five to six weeks late and one was over five months late. Status Report on the Implementation of the Comprehensive Anti-Apartheid Act, Report to Congressional Requesters, GAO/NSIAD-88-44 (Washington, D.C., October 1987) (hereafter GAO/NSIAD-88-44), p. 2.

6/ Cited in Jane's Annual Report on South Africa, 1990, pp. 13-14.

7/ See Dellums and others vs. Nuclear Regulatory Commission and the United States (D.C. Cir 87-1531) and Implementation of the Comprehensive Anti-Apartheid Act of 1986, a report by the Southern Africa Project of the Lawyers' Committee for Civil Rights under Law (Washington, D.C., June 1988) (hereafter Lawyers' Committee 1988).

8/ Oversight of the Administration's Implementation of the Comprehensive Anti-Apartheid Act of 1986 (Public Law 99-440) and an Assessment of Recent South African Political and Economic Developments, Hearing of the Subcommittee on International Economic Policy and on Africa of the Committee on Foreign Affairs, House of Congress, 100th Congress, First Session, Tuesday, 16 June 1987 (United States Government Printing Office, Washington, D.C., 1988).

Notes (continued)

9/ Apart from GAO/NSIAD-88-44, those reviews include South Africa: Summary Report on Trade, Lending, Investment and Strategic Minerals, report to Congressional Requesters, GAO/NSIAD-88-228 (Washington, D.C., September 1988) (hereafter GAO/NSIAD-88-228); South Africa: Enhancing Enforcement of the Comprehensive Anti-Apartheid Act, report to the Honorable Edward M. Kennedy, United States Senate, GAO/NSIAD-89-184 (Washington, D.C., July 1989) (hereafter GAO/NSIAD-89-184); South Africa: Debt Rescheduling and Potential for Financial Sanctions, Briefing Report to Congressional Requesters, GAO/NSIAD-90-109BR (Washington, D.C., February 1990) (hereafter GAO-NSIAD-90-109BR) and South Africa: Relationship with Western financial institutions, report to Congressional Requesters, GAO/NSIAD-90-189 (Washington, D.C., June 1990) (hereafter GAO/NSIAD-90-189).

10/ See United States General Accounting Office South Africa: Feasibility of Imposing Additional Sanctions on Gold, report to the Honorable Edward M. Kennedy, United States Senate, GAO/NSIAD-89-232 (Washington, D.C., September 1989) (hereafter GAO/NSIAD-89-232).

11/ GAO/NSIAD-88-44, pp. 19-20.

12/ These checks are unable to verify whether a computer is being used illegally via an off-site terminal or modem. See GAO/NSIAD-88-44, pp. 20-21.

13/ Hanlon, pp. 325-326. The Commonwealth Independent Expert Study on the Evaluation of the Application and Impact of Sanctions against South Africa (1989) requested six United States Government departments and intelligence agencies to provide reports and other information on file regarding the monitoring of shipping to and from South Africa under the Freedom of Information Act. The National Security Agency confirmed it held relevant material but that it was classified and hence exempt from the Act. The Central Intelligence Agency declined to confirm or deny whether it held such material. The Defence Intelligence Agency declared it held no responsive information. The United States Customs Service and Department of Commerce declared that most such relevant information was confidential, and one document was released by the State Department.

14/ GAO/NSIAD-89-184, pp. 1-2. A recommendation to the Secretary of State to ensure the publication of such a list has not yet borne fruit.

15/ Of the Customs investigations, 10 involved armaments and ammunition; 7 were related to aircraft and parts and related technical data; 6 involved computers and peripherals and 5 involved other goods. See Lawyers' Committee 1988, pp. 124-125.

16/ See Administration and Observance of the Code of Conduct Concerning the Employment Practices of Canadian Corporations Operating in South Africa (Ottawa, 1989).

Notes (continued)

17/ See Task Force on the Churches and Corporate Responsibility (TCCR) report 1988-89 (Toronto, 1989), pp. 49 and 51.

18/ The External Affairs Ministry had ruled that since Minorco was registered outside South Africa it was not covered by the ban. Requests that the results of the review be made public were not answered; TCCR report 1989, pp. 48-49.

19/ See Hanlon 1990, pp. 19-20.

20/ Schedule 7A, Regulation 4Q lists 14 categories of prohibited imports; while Schedule 13 Regulation 13B and Schedule 14 Regulation 13C respectively list 32 and 8 categories of prohibited exports.

21/ See U. Dahlin, Danish Sanctions Legislation - after four years (The National Committee - South Africa Action, Copenhagen, 1989), p. 6. However, Danish non-governmental organizations have pointed to a number of omissions from those reports.

22/ "Sanctions and sanctions busting: Research intensified", information provided by Isolate South Africa Committee (ISAK) to the Centre against Apartheid, 16 May 1990.

23/ The ban includes financial services, oil transport by sea, aviation, direct insurance, construction projects, tourism, consultancy assignments and servicing and maintenance of equipment. "New Swedish sanctions?", information provided by ISAK.

24/ Through accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German States have united to form one sovereign State. As from the date of unification, the Federal Republic of Germany acts in the United Nations under the designation of "Germany".

25/ See Hanlon 1990, p. 17.

26/ Ibid., p. 34.

27/ Ibid., p. 39.

28/ Ibid., p. 44.

29/ Arms embargo: 1) Export of Goods (Control) Order 1970, which covers military equipment; 2) South Africa (United Nations) Arms Embargo (Prohibited Transactions) Order 1978; the Import of Goods (Control) Order, 1954. Sensitive equipment and nuclear exports: Export of Goods (Control) Order, 1985. Annexes to each measure list precise equipment, which leaves very little room for interpretation.

30/ See Hanlon 1990, pp. 61-62.

Notes (continued)

31/ Ibid., p. 70.

32/ Letter dated 28 June 1990 addressed to the Chairman of the Security Council Committee established by resolution 421 (1977) by the Acting Permanent Representative of the Federal Republic of Germany to the United Nations.

33/ The violation involved the manufacture of ammunition for howitzers in South Africa at the plant of the Rheinmetall company. Four managers were sentenced and fined for illegal arms deliveries to South Africa, among other countries, between 1978 and 1980. See Hanlon 1990, p. 70-71.

34/ Der Spiegel, No. 18, April 1990, pp. 129-130.

35/ State Secretary in the Foreign Ministry of Norway cited in the report entitled "Norway concerned about German submarine affair with South Africa". The report was sent to the Centre against Apartheid by the World Campaign against Military and Nuclear Collaboration with South Africa, a Norwegian non-governmental organization.

36/ See the report of the Security Council Committee established by resolution 421 (1977) concerning the question of South Africa on activities during the period 1980 to 1989 (S/21015), paras. 53-60.

37/ Hanlon 1990, p. 41.

38/ Ibid., p. 42.

39/ See GAO/NSIAD-90-89.

40/ According to the World Gold Commission, one member of the Swiss Parliament declared that the Government's refusal to provide details of Swiss gold trade with South Africa made it impossible for the legislature to judge the country's position in a matter where its role in the world had become increasingly controversial.

41/ Hanlon 1990, p. 33.

42/ Ibid., p. 11.

43/ See Dahlin, p. 3.

44/ The Washington-based Investor Responsibility Research Center is a case in point. Its Southern Africa Service has produced a number of reports related to the monitoring of sanctions, inter alia, "Patterns of Multinational Corporations Disinvestment from South Africa. A report for the United Nations Centre on Transnational Corporations", May 1989 and The Impact of Sanctions on South Africa, (Washington, D.C., March 1990).

Notes (continued)

45/ The New York-based American Committee on Africa would act as a clearing house for information on transnational corporations operating in South Africa, the London-based End Loans to South Africa group would be in charge of information on bank loans and other financial resources affecting South Africa, and the Shipping Research Bureau (Amsterdam) would monitor the oil embargo. See "Declaration of the International Workshop on Sanctions", Drobak, Norway, 8-11 March 1990.

46/ Lawyers' Committee 1988, op. cit.

47/ See Hanlon 1990, p. 61-62.

48/ U. Dahlin, Danish Sanctions Legislation - after four years (The National Committee - South Africa Action, Copenhagen, 1989).

49/ See Hanlon 1990, p. 24.

50/ See U. Dahlin, pp. 5-7.

51/ Cited in J. Penttinen, "Development of Finnish Boycott Policy", Nordic Newsletter No. 1/89. Special: Nordic Boycott.

52/ See Hanlon 1990, p. 49.

53/ Ibid., p. 35.

54/ Ibid., p. 31.

55/ Ibid., p. 15.

56/ The Holland Committee on Southern Africa and the Woerkgroup Kairos, 1989: Ten Years Shipping Research Bureau (Amsterdam), p. 1.

57/ In 1984 Plessey was fined for forging certificates of origin which concealed the South Africa provenance of the Tellurometer portable range-finding unit that it had imported from South Africa. See Hanlon 1990, p. 62.

58/ See S/21015 and Jane's Annual Report on South Africa, 1990, pp. 16-17.

59/ Signe Landgren, Embargo Disimplemented - South Africa's Military Industry (Stockholm International Peace Research Institute and Oxford University Press, Oxford, 1989), p. 240.

60/ According to the study, corporations from Italy, France, Israel, the United Kingdom and the United States have assisted South Africa's aircraft industry, while companies from Canada, France the Federal Republic of Germany and Japan have played a role in South Africa's production of military vehicles. Firms from the Federal Republic of Germany and Israel have contributed to South Africa's rocket technology, while corporations from Austria and the Netherlands were among those supplying the small armaments industry.

Notes (continued)

61/ For example, the experience with the Coordinating Committee for Multilateral Export Controls (CoCom) shows that when Governments are intent on enforcing an export ban, they have devised extremely effective monitoring procedures even though, in many cases, these are administrative rather than legislative embargoes.